

Craig Douglas Stewart, you have pleaded guilty to one count of using a carriage service to transmit communication to groom another person to make it easier to procure a person under 16 years to engage in sexual activity, contrary to s 474.27AA(1) of the *Criminal Code (Cth)*; one count of use a carriage service to procure persons under 16 years of age, contrary to s 474.26(1) of the *Criminal Code (Cth)*; and one count of failing to comply with reporting obligations contrary to s 33 of the *Community Protection (Offender Reporting) Act (Tas)*. The sentencing proceedings were commenced before Geason J on 15 March 2023. His Honour heard facts and a plea in mitigation and ordered a Forensic Mental Health report in respect to the defendant. The Chief Justice determined, in accordance with the *Sentencing Act*, s 91(5), that it appears probable that Geason J would be unable to pass sentence within a reasonable time. Accordingly the matter was referred to me to pass sentence. I have had regard to a transcript of the sentencing hearing of 15 March 2023 and have also heard further submissions from Counsel following the receipt of the Forensic Mental Health Report and following the High Court delivering judgment in *Hurt v The King*; *Delzotto v The King* [2024] HCA 8.

Between 2 March and 24 March 2021, the defendant engaged in online conversations with an undercover police operative on the chat platforms ChatIW and WickrMe. During the conversations the police operative adopted the persona of a mother and a 14 year old child, being her daughter. The defendant believed that he was communicating with the mother and daughter. It is convenient when setting out the facts to refer to the assumed on-line personas. During the conversation the defendant asked the mother the age of her daughter, on two occasions, and he was informed that she was 14 years of age. The defendant replied "Nice age" and shortly thereafter stated "I like 12 up and sex chat and to find a mum and daughter to meet". After learning that the daughter was 14 years of age, the defendant sent the mother multiple nude images of himself and asked questions like: "You like? Do you think your daughter would like?" and "Would you show her the pics?".

The mother asked the defendant for a proof of life image with the daughter's name "Laura" written on a piece of paper. The defendant responded by sending two nude images depicting his penis whilst holding a piece of paper with the word "Laura" upon it. He asked the mother on multiple occasions if she had shown the nude images to her daughter and if the daughter had said anything about those images. During the communications, the defendant made a number of sexualised comments, including the following:

- "If you was to come here for a holiday with Laura would you be okay if she plays with me;
- I like to be licking you out and she could play with my cock;
- Love to see you and your daughter naked mmm;
- I don't do anything unless she or you want me to. Just being naked and touching each would be okay with me."

On 9 March 2021, the defendant engaged in further conversation with the police operative, again believing that he was talking to the daughter, Laura. This was on the chat platform WickrMe. During that conversation the defendant asked a number of sexualised questions of Laura, including asking her whether she had seen the naked images of his penis that he had sent to her mother, and asking Laura if she would like to "play with it". The defendant also sent three images of himself showing his exposed penis and said, "You can play with it, if you

and your Mum come here for a holiday; yes I mean it I let you play with me". He also said "If your Mum says its okay you not hurt it. You will make it hard and I will like you to".

During the conversation the defendant described sexual acts he would like to perform with the daughter Laura, including the following:

- "Rub between your legs and lick there if you like me to";
- "I hope I get to rub you there";
- "So if you do come here, would you like us to play with each other";
- "Can I ask, do you like the thought of us getting naked together and playing with each other"; and
- "Like you could put your hand down my pants. I could my hand down your pants."

Although the defendant was not conversing with an actual child, at all times he believed that he was communicating with a 14 year old female child. He was 52 years of age at the time of the communications. His moral culpability is therefore, in my view, high.

At the time he was using the chat platforms, the defendant was subject to reporting obligations under the *Community Protection (Offender Reporting) Act* 2005. He has been subject to such orders twice. In August 2008, he was sentenced for offences of possessing child exploitation material, communicating with intent to procure a person under the age of 17 years to engage in an unlawful sexual act, and performing an indecent act directed at a young person under the age of 17 years. For those matters, the defendant was sentenced to 18 months' imprisonment, 6 months suspended, he was placed upon the Community Protection (Offender Reporting) Register for a period of five years. Then on 26 November 2010, the defendant was sentenced for the crime of communicating with the intent to procure a person under the age of 17 years to engage in an unlawful sexual act, indecent assault and sexual intercourse with a person under the age of 17 years. For those matters, the defendant was sentenced to 12 months' imprisonment and there was an order that his name be placed on the register for a period of 12 years. His reporting obligations included an obligation to report within seven days any changes to his personal details, including details of any internet user names, instant messaging user names, chat room user names, or any other user name or identity used by him through the internet or other electronic communication services. The defendant failed to report his user name of "likeayoungerf", which pertained to his use of the ChatIW platform.

On 31 March 2021, police executed a search warrant at the defendant's premises. They located his mobile phone. Subsequent forensic analysis located records of a search history relating to the ChatIW platform. Within the photo application on the phone, some of the images the defendant had sent to the daughter were detected. On the same date, the defendant was interviewed by police. In respect to communicating with the daughter "Laura", he admitted that he had shared an image of himself which depicted his penis. He also admitted to having conversations with her in which he described his desire to engage in sexual activity with her and talked about the type of activities that he would like to perform upon her. He also admitted to police that he had not reported his use of your username despite being aware of his obligation to do so. The defendant told police that he had deleted his WickrMe application approximately one to two weeks' earlier as he no longer wanted to be involved in the conversations. The defendant was generally co-operative with police. He provided police with passwords and email accounts.

As noted, the defendant has two relevant prior convictions for sexual offending. This enlivens the mandatory sentencing provisions pursuant to s 16AAB of the *Crimes Act* because he has

previously been convicted of two child sexual abuse offences. The mandatory minimum head sentence in respect to both count 1 and count 2, is four years' imprisonment for each offence. I note s 16AAC(2) and (3) are statutory mechanisms that allow a court to impose a sentence less than the mandatory minimum where it considers that adequate recognition cannot be given to an offender's plea of guilty or co-operation without having to go below the mandatory minimum head sentence. In my view, it is not necessary to have resort to those provisions in this sentencing exercise. I also note that whilst the wording of the mandatory minimum head sentence provisions would seem to prohibit the imposition of a global sentence, s 19(6) of the *Crimes Act* allows for a degree of concurrency in respect to the mandatory minimum head sentences.

By way of background, the defendant is 54 years of age. Prior to his incarceration he had been living with his parents. He was in receipt of a disability support pension for hearing loss, which he has suffered from since childhood, and a neck injury. The neck injury arose in 2015 after the defendant underwent neck fusion surgery following the development of back difficulties the year prior. The surgery left him in constant pain and he was unable to pursue employment thereafter. Prior to that, the defendant had a strong industrial record. The defendant was in a long term relationship for a period of about 14 years. Three children were born to that relationship. Those children are now all adults. A second significant relationship which he had entered, ended around the time that he was incarcerated for the offending for which he was sentenced in 2008. It was not all that long after his release from that period of imprisonment that he committed the subsequent acts of sexual offending to which I have referred. Following the defendant's release from that incarceration, he commenced a relationship with a female that he met on social media. That relationship came to an end in January 2020. I am told that the defendant struggled to come to terms with the end of that relationship and experienced a significant decline in his mental health. I am also told that he believed that to be the catalyst for him beginning to access the various internet chat rooms. He was seeking company because in his words he was feeling particularly "down" and "worthless".

I have read and considered a Forensic Mental Health report prepared in respect to the defendant. In summary, the report indicates the defendant does not suffer from any major mental illness but meets the criteria for a diagnosis of a personality disorder, with a borderline and negative effectivity pattern. Individuals with such a disorder have impairment in functioning in aspects of the self, for instance, identity and self-worth, and also have difficulties in interpersonal functioning, for example, in developing and maintaining close and mutually satisfying relationships.

The report indicates that throughout adulthood, the defendant has struggled to form positive relationships outside of his immediate family group. The author of the report, Dr Jasper, opines that due to the hearing difficulties the defendant had throughout puberty, the defendant was socially ostracised during his teenage years. He was perceived as unappealing and singled out for teasing and name calling. This, most likely, in Dr Jasper's opinion, negatively affected the defendant's sense of self-worth and self-esteem. Such difficulties are likely to have impacted upon the defendant's development of an appropriate sense of self and left him sensitive to rejection and negative emotions, such as jealousy. In simple terms the defendant does not have a good understanding of how to negotiate interpersonal relationships in an emotionally intelligent manner. Consequently, has a tendency to over-react whenever one of his relationships comes to an end, and seek to remedy the distress he experiences by seeking connection and validation on on-line chat platforms.

Apparently, all of that which I have just outlined was the catalyst for the current offending. Whilst I accept the diagnosis of borderline personality disorder goes some way to explaining why the offending occurred, it does not invoke consideration of the matters referred to in *R v Verdins*. The report indicates that the defendant clearly understood that communicating with minors was the wrong thing to do, but he nevertheless acted in that manner because he derived something of a "thrill" from doing so. As to future risk of further sexual offending, the defendant is assessed as being at "above average risk"; particularly if he again finds himself in a circumstance of social isolation.

Dr Jasper's report suggests that the defendant does have some insight into the wrongfulness of his conduct. He recognises and accepts that he requires specific sexual offending treatment in order to understand how he can avoid further offending into the future.

This is, no doubt, very serious offending. As with all sexual crimes, general deterrence is a very significant sentencing consideration. The very clear object of legislation of this nature is to protect vulnerable children from sexual abuse and other forms of sexual exploitation. The seriousness of such abuse is not diminished when it occurs online. Offending involving online sexual exploitation is becoming increasingly prevalent and there is a very strong need for the Court to act, to the extent it is able, to protect children from the harm and potential corruption that is caused by sexualised communications directed at vulnerable children on-line. I note here, of course, that the communications were, in fact, directed to an undercover police operative. That is not mitigating. An offender's conduct is to be regarded as no less morally reprehensible merely because the person to whom the communication was made was, unbeknown to the offender, an undercover police officer (see *R v Gaggan* 2008, 192 A CRIMR 76). It is relevant, of course, that there is no evidence of actual harm occasioned by the defendant's conduct to a child.

The defendant's failure to comply with his reporting obligations is also a serious offence. The reporting obligations serve the purpose of providing intelligence to police relating to child sex offenders and thereby assist in the management of such offenders within the community. A failure to comply undermines the functionality and value of the reporting system, as is evidenced here.

I take into account the defendant's pleas of guilty. Whilst not entered at an early stage, they nevertheless retain value, particularly given the subject matter of the offending. A jury has been saved the trauma of having to examine and consider material of this nature. I take into account the matters set out in s 16A(2) of the *Crimes Act* that are relevant to this case.

My primary obligation as a sentencing judge in respect to Commonwealth offences, is to impose a sentence that is of a severity that is appropriate to all of the circumstances of the offending. Of course, the objective seriousness of these offences committed against a background of prior sexual offending, is reflected in the mandatory minimum head sentences that are required. Parliament has set heavy mandatory penalties reflective of the community's abhorrence of this type of conduct.

Mr Stewart, your behaviour was disgraceful. It must be denounced and the Court's commitment to the protection of children must be reflected in the sentences imposed.

I make the following orders. You are convicted of all matters to which you have entered pleas of guilty. On the State charge of fail to comply with reporting obligations, you are sentenced

to imprisonment for a period of six months, commencing from 15 March 2023, being the date you were remanded in custody. In respect to the crime of using a carriage service to groom another person to make it easier to procure a person under 16 years to engage in sexual activity, you are sentenced to imprisonment for a period of five years, commencing on 15 September 2023. In respect to the crime of using a carriage service to procure persons under 16 years of age, you are sentenced to a period of imprisonment of five years, commencing on 15 March 2025, the effect of which is that three years and six months of that sentence is to be served concurrently with the term of imprisonment previously imposed. In respect to the two Commonwealth offences, I impose a single, non-parole period. You are not to be eligible for parole until you have served four years of those sentences.

The result is a total sentence of imprisonment of 7 years from 15 March 2023. You must serve 4 years and 6 months before you are eligible for parole.

I order that your name be placed on the Register pursuant to the *Community Protection (Offender Reporting) Act 2005* and that you comply with the reporting obligations under that Act for a period of 20 years, such period to commence on the date of your release from custody.